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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO FOOD AND DRUGS -- TAXATION AND REGULATION OF MARIJUANA

Introduced By: Representatives Ajello, Newberry, Bennett, Martin, and Valencia

Date Introduced: February 06, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 21 of the General Laws entitled "FOOD AND DRUGS" is hereby
2 amended by adding thereto the following chapters:

3 CHAPTER 28.6.1

4 MARIJUANA REGULATION, CONTROL AND TAXATION ACT

5 **21-28.6.1-1. Short title.** -- This chapter shall be known and may be cited as the
6 "Marijuana Regulation, Control, and Taxation Act."

7 **21-28.6.1-2. Legislative findings.** -- The general assembly hereby finds and declares
8 that:

9 (1) More than seven (7) decades of arresting marijuana users has failed to prevent
10 marijuana use; a study published in the American Journal of Public Health compared marijuana
11 usage rates in the United States with rates in the Netherlands, where adults' marijuana use and
12 sales are de facto legal, found "no evidence to support claims that criminalization reduces
13 [marijuana] use."

14 (2) More than one hundred million (100,000,000) adults in the United States, including
15 the last three (3) presidents, have used marijuana, and data from the 2010 Monitoring the Future
16 Survey show that despite prohibition, more than eighty percent (80%) of twelfth graders find
17 marijuana "fairly easy" or "easy" to obtain.

18 (3) More than sixty thousand (60,000) people have been killed in drug cartel and
19 crackdown-related violence since the beginning of the crackdown on cartels in Mexico in 2006,

1 and, a significant portion of drug cartel profits come from marijuana sales in the United States.

2 (4) In June 2005, five hundred thirty (530) economists, including three (3) Nobel
3 Laureates, endorsed a study on the costs of marijuana prohibition by Harvard professor Dr.
4 Jeffrey Miron which estimated that taxing and regulating marijuana would yield ten billion
5 dollars to fourteen billion dollars (\$10,000,000,000 – \$14,000,000,000) in increased revenues and
6 savings, and which called for "an open and honest debate about marijuana prohibition," adding,
7 "We believe such a debate will favor a regime in which marijuana is legal but taxed and regulated
8 like other goods."

9 (5) Heads of state in countries that have been scarred by drug cartel violence are
10 beginning to call for a re-examination of drug policies, with past and current presidents of four
11 (4) Latin American countries -- current president of Guatemala, President Otto Pérez Molina,
12 Cesar Gaviria of Colombia, Fernando Henrique Cardoso of Brazil, and Felipe Calderon, Vicente
13 Fox, and Ernesto Zedillo of Mexico -- calling either for a discussion on decriminalizing
14 marijuana or for marijuana to be made legal and regulated.

15 (6) The lack of marijuana market regulation ensures that marijuana production and
16 distribution are in the hands of unlicensed growers, who are untaxed, unmonitored, and often
17 cultivated on state or federal lands, and the product is not controlled or regulated for safety
18 concerns.

19 (7) There were more than seven hundred fifty-seven thousand (757,000) arrests for
20 marijuana offenses in the United States in 2009, which is close to the entire adult population of
21 Rhode Island.

22 (8) Just over eight thousand one hundred (8,100) suspects were booked by federal law
23 enforcement in 2004, about one percent of all marijuana arrests, demonstrating that nearly all
24 marijuana arrests occur on the state level, and thus, state legislative action has the capacity to
25 significantly change policy.

26 (9) While there were more than two thousand seven hundred and two (2,702) arrests for
27 marijuana offenses in Rhode Island in 2009, thousands of serious crimes went unsolved; the
28 clearance rates for homicide, rape, and robbery were only forty-three and eight tenths percent
29 (43.8%), twenty-seven percent (27%), and twenty-nine and three tenths percent (29.3%) in Rhode
30 Island in 2009.

31 (10) There is an alarming racial disparity in marijuana arrests in Rhode Island, with
32 African Americans arrested at nearly three and one half (3½) times the rate of whites in 2009,
33 although their marijuana usage rates were very similar.

34 (11) Removing state criminal penalties for persons aged twenty-one (21) and older who

1 use or cultivate small amounts of marijuana, and from regulated providers, would allow police to
2 spend more time preventing and investigating serious crimes like murder, rape, assault, robbery,
3 burglary, and driving under the influence of alcohol and other drugs and would create substantial
4 savings.

5 (12) States are not required to enforce federal law or to prosecute people for engaging in
6 activities prohibited by federal law, and may choose whether or not to impose state criminal
7 penalties on conduct.

8 **21-28.6.1-3. Definitions.** -- For purposes of this chapter:

9 (1) "Department" means the state of Rhode Island department of business regulation.

10 (2) "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not;
11 the seeds thereof; the resin extracted from any part of the plant; and every compound,
12 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not
13 include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the
14 seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of
15 the mature stalks (except the resin extracted from it), fiber, oil, or cake, or the sterilized seed of
16 the plant that is incapable of germination.

17 (3) "Marijuana paraphernalia" means equipment, products, and materials which are used
18 or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing,
19 compounding, converting, producing, processing, preparing, testing, analyzing, packaging,
20 repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing
21 marijuana into the human body.

22 (4) "Public place" means any street, alley, park, sidewalk, public building other than
23 individual dwellings, or any place of business or assembly open to or frequented by the public,
24 and any other place to which the public has access.

25 (5) "Retailer" means an entity that is either:

26 (i) Registered pursuant to sections 21-28.6.2 and 44-49-17 of the general laws, to be
27 exempt from state penalties for purchasing marijuana from a wholesaler and selling marijuana
28 and marijuana paraphernalia to customers who are twenty-one (21) years of age or older; or

29 (ii) Exempt from state penalties under Rhode Island general laws 21-28.6.2-2 due to the
30 department not issuing registrations.

31 (6) "Safety compliance facility" means an entity that is either:

32 (i) Registered pursuant to chapter 21-28.6.2 and Rhode Island general laws section 44-49-
33 17, inclusive, of this chapter to be exempt from state penalties for providing one or both of the
34 following services: training, including that related to cultivation of marijuana, safe handling of

1 marijuana, and security and inventory procedures; or testing marijuana for potency and
2 contaminants; or

3 (ii) Exempt from state penalties under Rhode Island general laws section 21-28.6.2-3 due
4 to the department not issuing registrations.

5 (7) "Smoking" means heating to at least the point of combustion, causing plant material
6 to burn. It does not include vaporizing, which means heating below the point of combustion and
7 resulting in a vapor or mist.

8 (8) "State prosecution" means prosecution initiated or maintained by the state of Rhode
9 Island or an agency or political subdivision of the state of Rhode Island.

10 (9) "Wholesaler" means an entity that is either:

11 (i) Registered pursuant to sections 21-28.6.2 and 44-49-17 of the general laws, to be
12 exempt from state penalties for cultivating, preparing, packaging, and selling marijuana to a
13 retailer or another wholesaler, but not selling marijuana to the general public; or

14 (ii) Exempt from state penalties under Rhode Island general laws section 21-28.6.2-3 due
15 to the department not issuing registrations.

16 **21-28.6.1-4. Exempt activities. --** Except as otherwise provided in this chapter:

17 (1) A person who is twenty-one (21) years of age or older is exempt from arrest, civil or
18 criminal penalty, seizure or forfeiture of assets, discipline by any state or local licensing board,
19 and state prosecution for the following acts:

20 (i) Actually and constructively using, obtaining, purchasing, transporting, or possessing
21 one ounce (1 oz.) or less of marijuana. As used herein, "one ounce (1 oz.) or less of marijuana"
22 includes one ounce (1 oz.) or less of marijuana, or any mixture or preparation thereof, including,
23 but not limited to, five (5) grams or less of hashish, sixteen ounces (16 oz.) of marijuana-infused
24 product in solid form, or seventy-two ounces (72 oz.) of marijuana-infused product in liquid
25 form.

26 (ii) Controlling any premises or vehicle where up to one ounce (1 oz.) or less of
27 marijuana per person who is twenty-one (21) years of age or older is possessed, processed, or
28 stored;

29 (iii) Using, obtaining, purchasing, transporting, or possessing, actually or constructively,
30 marijuana paraphernalia;

31 (iv) Selling marijuana seeds to a wholesaler;

32 (v) Manufacturing, possessing, or producing marijuana paraphernalia;

33 (vi) Selling marijuana paraphernalia to retailers, wholesalers, or persons who are twenty-
34 one (21) years of age or older;

- 1 (vii) Transferring one ounce (1 oz.) or less of marijuana to a person who is twenty-one
2 (21) years of age or older without remuneration;
- 3 (viii) Aiding and abetting another person who is twenty-one (21) years of age or older in
4 the possession or use of one ounce (1 oz.) or less of marijuana;
- 5 (ix) Aiding and abetting another person who is twenty-one (21) years of age or older in
6 the possession or use of marijuana paraphernalia;
- 7 (x) Cultivating, possessing, growing, processing, or transporting no more than six (6)
8 marijuana plants, with three (3) or fewer being mature, flowering plants.
- 9 (xi) Controlling any premises where other persons twenty-one (21) years of age or older
10 cultivate marijuana plants, with the total number of mature, flowering plants not exceeding
11 eighteen (18) in any dwelling unit;
- 12 (xii) Assisting with the cultivation of marijuana plants that are cultivated at the same
13 location for persons twenty-one (21) years of age or older, with the total number of mature,
14 flowering plants not exceeding eighteen (18) in any dwelling unit; and
- 15 (xiii) Any combination of the acts described within paragraphs (i) to (xii), inclusive.
- 16 (2) A retailer or any person who is twenty-one (21) years of age or older and acting in his
17 or her capacity as an owner, employee, or agent of a retailer who acts in compliance with the
18 provisions of this chapter is exempt from arrest, civil or criminal penalty, seizure or forfeiture of
19 assets, discipline by any state or local licensing board, and state prosecution for the following
20 acts:
- 21 (i) Transporting or possessing, actually or constructively, marijuana, including seedlings
22 or cuttings that was purchased from a wholesaler or a retailer;
- 23 (ii) Obtaining or purchasing marijuana from a wholesaler or a retailer;
- 24 (iii) Selling or transferring marijuana to another retailer;
- 25 (iv) Manufacturing, possessing, producing, obtaining, or purchasing marijuana
26 paraphernalia;
- 27 (v) Selling, transferring, or delivering marijuana, including seedlings or cuttings, which
28 originate from a wholesaler or retailer, or marijuana paraphernalia to any person who is twenty-
29 one (21) years of age or older;
- 30 (vi) Aiding and abetting any person who is twenty-one (21) years of age or older in the
31 possession or use of one ounce (1 oz.) or less of marijuana and three (3) or fewer marijuana
32 seedlings or cuttings;
- 33 (vii) Aiding and abetting any person who is twenty-one (21) years of age or older in the
34 possession or use of marijuana paraphernalia;

1 (viii) Controlling any premises or vehicle where marijuana and marijuana paraphernalia
2 is possessed, sold, or deposited in a manner that is not in conflict with this chapter or department
3 regulations; and

4 (ix) Any combination of the acts described within paragraphs (i) to (viii), inclusive.

5 (3) A wholesaler or any person who is twenty-one (21) years of age or older and acting in
6 his or her capacity as an owner, employee, or agent of a wholesaler who acts in compliance with
7 the provisions of this chapter is exempt from arrest, civil or criminal penalty, seizure or forfeiture
8 of assets, discipline by any state or local licensing board, and state prosecution for the following
9 acts:

10 (i) Cultivating, packing, processing, transporting, or manufacturing marijuana;

11 (ii) Producing marijuana-infused products, including tinctures, oils, and edible or potable
12 goods;

13 (iii) Transporting or possessing marijuana that was produced by the wholesaler or another
14 wholesaler;

15 (iv) Transporting or possessing marijuana seeds;

16 (v) Possessing, transporting, selling, or producing marijuana paraphernalia;

17 (vi) Selling marijuana to a retailer or a wholesaler;

18 (vii) Purchasing marijuana from a wholesaler;

19 (viii) Purchasing marijuana seeds from a person who is twenty-one (21) years of age or
20 older;

21 (ix) Controlling any premises or vehicle where marijuana and marijuana paraphernalia is
22 possessed, manufactured, sold, or deposited in a manner that is not in conflict with this chapter or
23 department regulations; and

24 (x) Any combination of the acts described within paragraphs (i) to (ix), inclusive.

25 (4) A safety compliance facility or any person who is twenty-one (21) years of age or
26 older and acting in his or her capacity as an owner, employee, or agent of a safety compliance
27 facility who acts in compliance with the provisions of this chapter shall not be subject to state
28 prosecution; search, except by the department pursuant to Rhode Island general laws section 21-
29 28.6.2-17; seizure; or penalty in any manner or be denied any right or privilege, including, but not
30 limited to, civil penalty or disciplinary action by a court or business licensing board or entity,
31 solely for acting in accordance with this chapter and department regulations to provide the
32 following services:

33 (i) Acquiring or possessing marijuana obtained from wholesalers, retailers, or, if the
34 quantity is no more than one ounce (1 oz.) per person, individuals twenty-one (21) years of age or

1 older;

2 (ii) Transporting or possessing marijuana obtained from wholesalers, retailers, or, if the
3 quantity is no more than one ounce (1 oz.) per person, individuals twenty-one (21) years of age or
4 older;

5 (iii) Returning marijuana to wholesalers, retailers, or, if the quantity is no more than one
6 ounce (1 oz.) per person, individuals twenty-one (21) years of age or older;

7 (iv) Receiving compensation for analytical testing, including for contaminants or
8 potency; and

9 (v) Any combination of the acts described within paragraphs (i) through (iv), inclusive.

10 (5) The acts listed in subdivisions (1) through (4), when undertaken in compliance with
11 the provisions of this chapter, are lawful under Rhode Island law.

12 (6) Except as otherwise provided in subdivision (7), in a prosecution for selling,
13 transferring, delivering, giving, or otherwise furnishing marijuana or marijuana paraphernalia to
14 any person who is under twenty-one (21) years of age, it is a complete defense if:

15 (i) The person who sold, gave, or otherwise furnished marijuana or marijuana
16 paraphernalia to a person who is under twenty-one (21) years of age was a retailer or was acting
17 in his or her capacity as an owner, employee, or agent of a retailer at the time the marijuana or
18 marijuana paraphernalia was sold, given, or otherwise furnished to the person; and

19 (ii) Before selling, giving, or otherwise furnishing marijuana or marijuana paraphernalia
20 to a person who is under twenty-one (21) years of age, the person who sold, gave, or otherwise
21 furnished the marijuana or marijuana paraphernalia, or a staffer or agent of the retailer, was
22 shown a document which appeared to be issued by an agency of a federal, state, tribal, or foreign
23 sovereign government and which indicated that the person to whom the marijuana or marijuana
24 paraphernalia was sold, given, or otherwise furnished was twenty-one (21) years of age or older
25 at the time the marijuana or marijuana paraphernalia was sold, given, or otherwise furnished to
26 the person.

27 (7) The complete defense set forth in subdivision (6) does not apply if:

28 (i) The document which was shown to the person who sold, gave, or otherwise furnished
29 the marijuana or marijuana paraphernalia was counterfeit, forged, altered, or issued to a person
30 other than the person to whom the marijuana or marijuana paraphernalia was sold, given, or
31 otherwise furnished; and

32 (ii) Under the circumstances, a reasonable person would have known or suspected that
33 the document was counterfeit, forged, altered, or issued to a person other than the person to
34 whom the marijuana or marijuana paraphernalia was sold, given, or otherwise furnished.

1 **21-28.6.1-5. Authorized activities.** -- (a) Any person who is twenty-one (21) years of
2 age or older is authorized to manufacture, produce, use, obtain, purchase, transport, or possess,
3 actually or constructively, marijuana paraphernalia.

4 (b) Any person who is twenty-one (21) years of age or older is authorized to distribute or
5 sell marijuana paraphernalia to retailers, wholesalers, or persons who are twenty-one (21) years of
6 age or older.

7 **21-28.6.1-6. Civil violation.** -- The manufacture or cultivation of six (6) or fewer
8 marijuana plants by any person who is twenty-one (21) years of age or older in a location that is
9 contrary to this subsection is a misdemeanor punishable by a fine of up to one thousand dollars
10 (\$1,000), up to ten (10) days in jail, or both.

11 (1) Cultivation shall not occur in a location where the marijuana plants are subject to
12 public view without the use of binoculars, aircraft, or other optical aids.

13 (2) Marijuana that is cultivated outdoors must be cultivated in an enclosed, locked,
14 location, such as a locked fenced-in area.

15 (3) Cultivation may only occur on property lawfully in possession of the cultivator or
16 with the consent of the person in lawful possession of the real property.

17 (4) If one or more persons under twenty-one (21) years of age live in or are guests at the
18 property where marijuana is cultivated, reasonable precautions must be taken to prevent their
19 access to marijuana plants. For purposes of illustration and not limitation, cultivating marijuana in
20 a locked closet, room, or fully enclosed area to which the person or persons under twenty-one
21 (21) years of age do not possess a key, constitutes reasonable precautions.

22 **21-28.6.1-7. Activities not exempt.** -- (a) The provisions of this chapter do not exempt
23 any person from arrest, civil or criminal penalty, seizure or forfeiture of assets, discipline by any
24 state or local licensing board, and state prosecution for, nor may he or she establish an affirmative
25 defense based on this chapter to charges arising from, any of the following acts:

26 (1) Driving, operating, or being in actual physical control of a vehicle or a vessel under
27 power or sail while impaired by marijuana; or

28 (2) Possessing marijuana if the person is a prisoner; or

29 (3) Possessing marijuana in any local detention facility, county jail, state prison,
30 reformatory, or other correctional facility, including, without limitation, any facility for the
31 detention of juvenile offenders.

32 **21-28.6.1-8. Smoking marijuana shall be prohibited in all public places.** -- (a) A
33 person who smokes marijuana in such an indoor public place shall be guilty of a petty
34 misdemeanor, and may be punished as follows:

1 (1) By a fine of not more than two hundred fifty dollars (\$250), imprisonment for a term
2 not exceeding ten (10) days, or both for the first violation;

3 (2) By a fine of not more than five hundred dollars (\$500), imprisonment for a term not
4 exceeding thirty (30) days, or both, for the second or subsequent violation.

5 (b) A person who smokes marijuana in an outdoor public place shall be liable for a civil
6 penalty of one hundred fifty dollars (\$150).

7 (c) Municipalities may impose additional fines equivalent to state fines for the
8 consumption of alcohol in an outdoor public place.

9 **21-28.6.1-9. Places of employment.** -- The provisions of this chapter do not require
10 employers to accommodate the use or possession of marijuana, or being under the influence of
11 marijuana, in a place of employment.

12 **21-28.6.1-10. Rental premises.** -- The provisions of this chapter do not prevent a
13 landlord from prohibiting the cultivation of marijuana on the rental premises.

14 **21-28.6.1-11. Hotels and motels.** -- A landlord or innkeeper may prohibit the smoking of
15 marijuana on the rented property or rooms if the landlord or innkeeper posts a notice.

16 **21-28.6.1-12. False age representation.** -- Any person who falsely represents himself or
17 herself to be twenty-one (21) years of age or older in order to obtain any marijuana or marijuana
18 paraphernalia pursuant to this chapter is guilty of a misdemeanor.

19 **21-28.6.1-13. Expungement.** -- This chapter shall, by operation of law, expunge the
20 conviction of anyone previously convicted of possession of one ounce (1 oz.) or less of marijuana
21 or possession of marijuana paraphernalia, provided that person was twenty-one (21) years of age
22 or older at the time of conviction.

23 **21-28.6.1-14. Medical use.** -- Nothing contained herein shall be construed to repeal or
24 modify any law concerning the medical use of marijuana or tetrahydrocannabinol in other forms,
25 such as Marinol.

CHAPTER 28.6.2

TAXATION AND REGULATION OF MARIJUANA

28 **21-28.6.2-1. Definitions.** -- As used in this chapter:

29 (1) "Marijuana" means all parts of the plant cannabis sativa L., whether growing or not;
30 the seeds thereof; the resin extracted from any part of the plant; and every compound,
31 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not
32 include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the
33 seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of
34 the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of

1 the plant that is incapable of germination.

2 (2) "Retailer" means an entity that is either:

3 (i) Registered pursuant to sections 21-28.6.2 and 44-49-17 of the general laws, to be
4 exempt from state penalties for purchasing marijuana from a wholesaler and selling marijuana
5 and marijuana paraphernalia to customers who are twenty-one years (21) years of age or older; or

6 (ii) Exempt from state penalties under Rhode Island general laws section 21-28.6.2-2 due
7 to the department not issuing registrations.

8 (3) "Safety compliance facility" means an entity that is either:

9 (i) Registered pursuant to sections 21-28.6.2 and 44-49-17 of the general laws, to be
10 exempt from state penalties for providing one or both of the following services:

11 (A) Training, including that related to cultivation of marijuana, safe handling of
12 marijuana, and security and inventory procedures; or

13 (B) Testing marijuana for potency and contaminants; or

14 (ii) Exempt from state penalties under Rhode Island general laws section 21-28.6.2-4 due
15 to the department not issuing registrations.

16 (4) "Wholesaler" means an entity that is either:

17 (i) Registered pursuant to sections 21-28.6.2 and 44-49-17 of the general laws, to be
18 exempt from state penalties for cultivating, preparing, packaging, and selling marijuana to a
19 retailer or another wholesaler, but not selling marijuana to the general public; or

20 (ii) Exempt from state penalties under Rhode Island general laws section 21-28.6.2-3 due
21 to the department not issuing registrations.

22 **21-28.6.2-2. Retailer registration. --** Except as otherwise provided in Rhode Island
23 general laws section 21-28.6.2-5 of this chapter:

24 (1) A person or an entity may apply, in accordance with the provisions of this chapter and
25 the regulations adopted pursuant thereto, for the issuance of a registration exempting the entity
26 from state prosecution and penalties for operating as a retailer pursuant to the provisions of this
27 chapter.

28 (2) Each applicant for a retailer registration shall submit application materials required by
29 the department and a non-refundable fee in an amount determined by the department, not to
30 exceed five thousand dollars (\$5,000).

31 (3) By one year after the effective date of this chapter, the department shall have issued at
32 least one retailer registration per county. By two (2) years after the effective date of this chapter,
33 the department shall have issued at least one retailer registration per county, and up to 25 total
34 registrations, provided a sufficient number of qualified applicants exist. If more qualifying

1 applicants apply than the department will register, the department shall implement a competitive
2 scoring process to determine to which applicants to grant registrations, which may be varied for
3 geographic distribution. The scoring system shall take into account the applicant and managing
4 officers' applicable experience, training, and expertise; the applicant's plan for security and
5 diversion prevention; any criminal, civil, or regulatory issues encountered by other entities the
6 applicant and managing officers have controlled or managed; and the suitability of the proposed
7 location.

8 (4) If at any time after two (2) years after the effective date of this chapter, there are
9 fewer than twenty-five (25) valid and outstanding retailer registrations, with at least one
10 registration in each county, the department shall accept and process applications for retailer
11 registrations.

12 (5) The fee for the initial issuance of a registration as a retailer is ten thousand dollars
13 (\$10,000).

14 (6) A registration as a retailer may be renewed annually for a five thousand dollar
15 (\$5,000) fee. The renewal application may be submitted up to one hundred twenty (120) days
16 before the expiration of the retailer registration. If the department fails to approve a valid renewal
17 application, it shall be deemed granted sixty (60) days after its submission.

18 (7) If at any time beginning eighteen (18) months after the effective date of this chapter,
19 the department has failed to begin issuing retailer registrations or has ceased issuing retailer
20 registrations or renewals as required by this chapter, a retail registration shall not be required to
21 operate as a retailer for any person or entity that operates in a location zoned for retail use that
22 satisfies the requirements set forth in this chapter and any regulations adopted pursuant to the
23 chapter.

24 (8) Nothing in this section shall prohibit an entity registered as a retailer or seeking
25 retailer registration from also holding a wholesaler registration or seeking registration as a
26 wholesaler pursuant to section 21-28.6.2-3 of the Rhode Island general laws.

27 **21-28.6.2-3. Wholesaler registration.** -- Except as otherwise provided in Rhode Island
28 general laws section 21-28.6.2-5 of this chapter:

29 (1) An entity may apply, in accordance with the provisions of this chapter and the
30 regulations adopted pursuant thereto, for the issuance of a registration exempting the entity from
31 state prosecution and penalties for operating as a wholesaler pursuant to the provisions of this
32 chapter.

33 (2) Each applicant for a wholesaler registration shall submit application materials
34 required by the department and a non-refundable fee in an amount determined by the department,

1 not to exceed five thousand dollars (\$5,000).

2 (3) By three hundred (300) days after the effective date of this chapter, the department
3 shall have issued at least one wholesaler registration per county, provided that qualified
4 applicants exist. By two (2) years after the effective date of this chapter, the department shall
5 have issued at least ten (10) wholesaler registrations. If more qualifying applicants apply than the
6 department will register, the department shall implement a competitive scoring process to
7 determine to which applicants to grant registrations, which may be varied for geographic
8 distribution. The scoring system shall take into account the applicant and managing officers'
9 applicable experience, training, and expertise; the applicant's plan for security and diversion
10 prevention; any criminal, civil, or regulatory issues encountered by other entities the applicant
11 and managing officers have controlled or managed; and the suitability of the proposed location.

12 (4) If at any time after two (2) years after the effective date of this chapter, there are
13 fewer valid wholesaler registrations than specified in subdivision (3), the department shall accept
14 and process applications for wholesaler registrations. In addition, the department may, at its
15 discretion, grant additional wholesaler registrations.

16 (5) The fee for the initial issuance of a registration as a wholesaler is ten thousand dollars
17 (\$10,000).

18 (6) A registration as a wholesaler may be renewed annually for a five thousand (\$5,000)
19 dollar fee. The renewal application may be submitted up to one hundred twenty (120) days before
20 the expiration of the wholesaler registration. If the department fails to approve a valid renewal
21 application, it shall be deemed granted sixty (60) days after its submission.

22 (7) If at any time beginning eighteen (18) months after the effective date of this chapter,
23 the department has failed to begin issuing wholesaler registrations or has ceased issuing
24 wholesaler registrations in accordance with this chapter, a wholesaler registration shall not be
25 required to operate as a wholesaler for any person or entity that operates in a location zoned for
26 agricultural or industrial use that satisfies the requirements set forth in this chapter and any
27 regulations adopted pursuant to the chapter.

28 (8) Nothing in this section shall prohibit an entity registered as a wholesaler or seeking
29 wholesaler registration from also holding a retailer registration or seeking registration as a retailer
30 pursuant to section 21-28.6.2-3 of the Rhode Island general laws.

31 **21-28.6.2-4. Safety compliance facility registration.** -- Except as otherwise provided in
32 Rhode Island general laws section 21-28.6.2-5 of this chapter:

33 (1) An entity may apply, in accordance with the provisions of this chapter and the
34 regulations adopted pursuant thereto, for the issuance of a registration exempting the entity from

1 state prosecution and penalties for operating as a safety compliance facility pursuant to the
2 provisions of this chapter.

3 (2) Each applicant for a safety compliance facility registration shall submit application
4 materials required by the department and a non-refundable fee in an amount determined by the
5 department, not to exceed five thousand dollars (\$5,000).

6 (3) If qualified applicants exist, the department shall grant a two (2) year registration to
7 at least two (2) safety compliance facilities within one year of the effective date of this chapter,
8 provided that each facility pays a five thousand dollar (\$5,000) fee. If more qualifying applicants
9 apply than the department will register, the department shall implement a competitive scoring
10 process to determine to which applicants to grant registrations, which may be varied for
11 geographic distribution. The scoring system shall take into account the applicant and managing
12 officers' applicable experience, training, and expertise; the applicant's plan for security and
13 diversion prevention; any criminal, civil, or regulatory issues encountered by other entities the
14 applicant and managing officers controlled or managed; the applicant's plan for services; and the
15 suitability of the proposed location.

16 (4) If at any time after two (2) years after the effective date of this chapter, there are
17 fewer than two (2) valid safety compliance facility registrations, the department shall accept and
18 process applications for safety compliance facility registrations. In addition, the department may,
19 at its discretion, grant additional safety compliance facility registrations.

20 (5) A safety compliance facility registration may be renewed biennially for a five
21 thousand dollar (\$5,000) fee. The renewal application may be submitted up to one hundred
22 twenty (120) days before the expiration of the registration. If the department fails to approve a
23 valid renewal application, it shall be granted sixty (60) days after its submission.

24 **21-28.6.2-5. Ineligibility for registration.** -- A retailer, wholesaler, or safety compliance
25 facility may not operate, and a prospective retailer, wholesaler, or safety compliance facility may
26 not apply for a registration if any of the following are true:

27 (1) The entity would be located within one thousand feet (1000') of the property line of a
28 pre-existing public school, private school, or structure used primarily for religious services or
29 worship; or

30 (2) The entity sells intoxicating liquor for consumption on the premises.

31 **21-28.6.2-6. Municipalities.** -- Nothing shall prohibit municipalities from enacting
32 ordinances or regulations not in conflict with this section or with department rules regulating the
33 time, place, and manner of wholesaler, retailer, or safety compliance facility operations, provided
34 that no local government may prohibit wholesaler, retailer, or safety compliance facility

1 operations altogether, either expressly or through the enactment of ordinances or regulations
2 which make wholesaler, retailer, or safety compliance facility operations impracticable.

3 **21-28.6.2-7. Advertising and product placement.** -- (a) No retailer, wholesaler, or other
4 person may advertise the sale of marijuana in a manner contrary to the regulations established by
5 the department.

6 (b) Film, television, production, and other entertainment companies are prohibited from
7 paying for the product placement of marijuana or marijuana products in any production filmed in
8 Rhode Island.

9 **21-28.6.2-8. Retailer safety insert.** -- A retailer shall:

10 (1) Include a safety insert with all marijuana sold. The safety insert may, at the
11 department's discretion, be developed and approved by the department and include, but not be
12 limited to, information on:

13 (i) Methods for administering marijuana;

14 (ii) Any potential dangers stemming from the use of marijuana; and

15 (iii) How to recognize what may be problematic usage of marijuana and obtain
16 appropriate services or treatment for problematic usage.

17 (2) Sell marijuana in its original wholesaler packaging without making any changes or
18 repackaging.

19 **21-28.6.2-9. Warning label by wholesaler or safety compliance facility.** -- A
20 wholesaler must create a unique package and label for its marijuana identifying itself as the
21 producer. The packaging shall include:

22 (1) The name and registration number of the wholesaler.

23 (2) If a safety compliance facility is operational, the potency of the marijuana, as
24 determined by testing by a safety compliance facility, represented by the percentage of
25 tetrahydrocannabinol by mass.

26 (3) A "produced on" date which reflects the date that the wholesaler finished drying and
27 processing the marijuana and placed it in its packaging.

28 (4) Warnings that state: "Consumption of marijuana impairs your ability to drive a car or
29 operate machinery," "Keep away from children," and, unless federal or state laws have changed,
30 "Possession of marijuana is illegal outside of Rhode Island and under federal law."

31 **21-28.6.2-10. Wholesale cultivation facilities.** -- All marijuana cultivated by
32 wholesalers shall be cultivated only in one or more enclosed, locked facilities, each of which
33 must have been registered with the department, unless the department has ceased issuing or failed
34 to begin issuing registrations. An "enclosed, locked facility" may include a building, room,

1 greenhouse, fully enclosed fenced-in area, or other location enclosed on all sides and equipped
2 with locks or other security devices that permit access only by:

3 (1) Employees, agents, or owners of the wholesaler, all of whom must be twenty-one (21)
4 years of age or older;

5 (2) Government employees performing their official duties;

6 (3) Contractors performing labor that does not include marijuana cultivation, packaging,
7 or processing; contractors must be accompanied by an employee, agent, or owner of the
8 wholesaler when they are in areas where marijuana is being grown or stored; or

9 (4) Members of the media, elected officials, and other individuals over the age of twenty-
10 one (21) touring the facility, if they are accompanied by an employee, agent, or owner of the
11 wholesaler.

12 **21-28.6.2-11. Transportation of marijuana. --** A wholesaler or any person who is
13 acting in his or her capacity as an owner, employee, or agent of a wholesaler must have
14 documentation when transporting marijuana on behalf of the wholesaler that specifies the amount
15 of marijuana being transported, the registry identification number of the wholesaler, the date the
16 marijuana is being transported, and the registry identification number of the intended retailer,
17 other wholesaler, or safety compliance facility. If the retailer or wholesaler does not have a
18 registry number because the department has ceased issuing registry identification certificates
19 or has failed to begin issuing registry identification certificates, the retailer or wholesaler may
20 instead use a number of its choosing that it consistently uses on documentation in place of a
21 registry identification number.

22 **21-28.6.2-12. Retailer violations. --** (a) A retailer shall not:

23 (1) Sell, give, or otherwise furnish marijuana or marijuana paraphernalia to any person
24 who is under twenty-one (21) years of age;

25 (2) Allow any person who is under twenty-one (21) years of age to be present inside any
26 room where marijuana is stored or sold by the retailer unless the person who is under twenty-one
27 (21) years of age is a government employee performing his or her official duties, an elected
28 official, a member of the media, or a contractor performing labor that does not include marijuana
29 cultivation, packaging, or processing;

30 (3) Sell, give, or otherwise furnish more than one ounce (1 oz.) of marijuana or more than
31 three (3) seedlings or cuttings of marijuana to a person in a single transaction;

32 (4) Knowingly and willfully sell, give, or otherwise furnish an amount of marijuana to a
33 person that would cause that person to possess more than one ounce (1 oz.) of marijuana or more
34 than three (3) marijuana plants, seedlings, or clones;

1 (5) Purchase marijuana, other than marijuana seeds, from any person other than a
2 licensed wholesaler or retailer;

3 (6) Violate regulations issued by the department;

4 (b) In addition to any other penalty provided pursuant to specific statutes, a retailer who
5 violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than
6 one thousand dollars (\$1,000).

7 (c) Except as otherwise provided in this subsection, in a prosecution for a violation of
8 Rhode Island general laws section 21-28.6.2-12, it is a complete defense that before allowing a
9 person who is under twenty-one (21) years of age into the room where marijuana is sold or stored,
10 a staff member for the retailer was shown a document which appeared to be issued by an agency
11 of a federal, state, tribal, or foreign sovereign government and which indicated that the person
12 who was allowed onto the premises of the retailer was twenty-one (21) years of age or older at the
13 time the person was allowed onto the premises of the retailer. The complete defense set forth in
14 this subsection does not apply if:

15 (1) The document which was shown to the person who allowed the person who is under
16 twenty-one (21) years of age onto the premises of the retailer was counterfeit, forged, altered, or
17 issued to a person other than the person who was allowed onto the premises of the retailer; and

18 (2) Under the circumstances, a reasonable person would have known or suspected that the
19 document was counterfeit, forged, altered, or issued to a person other than the person who was
20 allowed onto the premises.

21 (d) As used in this section, "marijuana paraphernalia" means equipment, products, and
22 materials which are used or intended for use in planting, propagating, cultivating, growing,
23 harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,
24 analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or
25 otherwise introducing marijuana into the human body.

26 **21-28.6.2-13. Wholesaler violations. --** (a) A wholesaler shall not:

27 (1) Allow any person who is under twenty-one (21) years of age to be present on the
28 premises of any of its enclosed, locked facilities where marijuana is cultivated or in any room
29 where the wholesaler stores or processes marijuana unless the person is a department employee or
30 public safety officer performing his or her duties, an elected official, a member of the media, or a
31 contractor performing labor unrelated to marijuana cultivation, packaging, or processing;

32 (2) Sell, give, or otherwise furnish marijuana to any person other than a retailer,
33 wholesaler, safety compliance facility, or a staff member acting on behalf of a retailer,
34 wholesaler, or safety compliance facility;

1 (3) Purchase marijuana, other than marijuana seeds, from any person other than a
2 wholesaler; or

3 (4) Purchase or sell, give, or otherwise furnish marijuana in any manner other than as is
4 exempted from state penalties pursuant to the provisions of this chapter and any regulations
5 adopted pursuant thereto.

6 (b) In addition to any other penalty provided pursuant to specific statutes, a person who
7 violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than
8 one thousand dollars (\$1,000).

9 (c) Except as otherwise provided in this subsection, in a prosecution for a violation of
10 Rhode Island general laws section 21-28.6.2-13, it is a complete defense that before allowing the
11 person who is under twenty-one (21) years of age onto the premises, a staff member of the
12 wholesaler was shown a document which appeared to be issued by an agency of a federal, state,
13 tribal, or foreign sovereign government and which indicated that the person who was allowed
14 onto the premises of the wholesaler was twenty-one (21) years of age or older at the time the
15 person was allowed onto the premises of the wholesaler. The complete defense set forth in this
16 subsection does not apply if:

17 (1) The document which was shown to the person who allowed the person who is under
18 twenty-one (21) years of age onto the premises of the wholesaler was counterfeit, forged, altered,
19 or issued to a person other than the person who was allowed onto the premises of the wholesaler;
20 and

21 (2) Under the circumstances, a reasonable person would have known or suspected that the
22 document was counterfeit, forged, altered, or issued to a person other than the person who was
23 allowed onto the premises.

24 **21-28.6.2-14. Suspension or termination of registration. --** (a) The department may
25 suspend or terminate the registration of a retailer, wholesaler, or safety compliance facility that
26 commits multiple or serious violations of this chapter or reasonable regulations issued pursuant to
27 it.

28 (b) If the department has ceased issuing registrations or has not begun issuing
29 registrations, and a retailer, wholesaler, or safety compliance facility lacks a registration as a
30 result, any city or town where the retailer, wholesaler, or safety compliance facility is operating
31 may file for an injunction in district court if the retailer has committed multiple or serious
32 violations of this act or regulations issued pursuant to it.

33 **21-28.6.2-15. Excise tax. --** An excise tax is hereby levied upon wholesalers and must be
34 collected respecting all marijuana sold to retailers at the rate of either fifty dollars (\$50.00) per

1 ounce or proportionate part thereof, or an amount that the department may set that adjusts the
2 initial fifty dollars (\$50) per ounce rate for inflation or deflation based on the consumer price
3 index.

4 **21-28.6.2-16. Distribution of funds. --** The department shall apportion the money
5 remitted to the department from registration fees and taxes collected pursuant to this chapter in
6 the following manner:

7 (1) The department shall retain sufficient money to defray the entire cost of
8 administration of this chapter.

9 (2) After retaining sufficient money to defray the entire cost of administration of this
10 chapter pursuant to subdivision (1), the department shall remit the remaining money to the Rhode
11 Island general fund, forty percent (40%) of which must be distributed to the Rhode Island
12 department of health for use in voluntary programs for the prevention or treatment of the abuse of
13 alcohol, tobacco, or controlled substances, and ten percent (10%) of which must be spent on
14 clinical research into the medical efficacy of marijuana.

15 **21-28.6.2-17. Department regulations. --** (a) The department is responsible for
16 administering and carrying out the provisions of this chapter.

17 (b) The department may adopt regulations that are necessary and convenient to
18 administer and carry out the provisions of this chapter.

19 (c) The department shall adopt regulations that:

20 (1) Set forth the procedures for the application for and issuance of registrations to
21 retailers, wholesalers, and safety compliance testing facilities, including the content and form for
22 an application to be registered as a retailer, wholesaler, or safety compliance facility;

23 (2) Specify the procedures for the collection of taxes levied pursuant to this chapter;

24 (3) Specify the content, form, and timing of reports, which must be completed by each
25 retailer, wholesaler, and safety compliance facility and which must be available for inspection by
26 the department. The reports shall include information on sales, expenses, inventory, and taxes and
27 shall be retained for at least one year after the completion of the forms;

28 (4) Specify the requirements for the packaging and labeling of marijuana, including those
29 in Rhode Island general laws section 21-28.6.2-9;

30 (5) Specify the requirements for the safety insert to be included with marijuana by
31 retailers, including those in Rhode Island general laws section 21-28.6.2-8, if the department
32 chooses to do so;

33 (6) Establish reasonable security requirements for wholesalers and retailers;

34 (7) Require the posting or display of the registration of a retailer, wholesaler, or safety

1 compliance facility:

2 (8) Establish restrictions on advertising for the sale of marijuana. The restrictions shall:

3 (i) Be in compliance with the United States Constitution and the Rhode Island

4 Constitution; and

5 (i) Be at least as restrictive as limitations on advertising tobacco products, provided that

6 the regulations may not prevent appropriate signs on the property of the retailer or wholesaler,

7 listings in business directories including phone books, listings in publications focused on

8 marijuana, or the sponsorship of health or not-for-profit charity or advocacy events;

9 (9) Establish procedures for inspecting and auditing the records or premises of a retailer,

10 wholesaler, or safety compliance facility:

11 (10) Set a schedule of civil fines for violations of this chapter and regulations issued

12 pursuant to this chapter;

13 (11) Set forth the procedures for hearings on civil fines and suspensions and revocation of

14 a registration as a retailer, wholesaler, or safety compliance facility for a violation of any

15 provision of this chapter or the regulations adopted pursuant to this chapter;

16 (12) Establish reasonable environmental controls to ensure that any registered

17 wholesalers, retailers, and safety compliance facilities minimize any harm to the environment,

18 adjoining and nearby landowners, and persons passing by. This may include restrictions on the

19 use of pesticides;

20 (13) Establish rules requiring wholesalers and retailers to create identification cards for

21 their employees and providing for the contents of the identification cards; and

22 (14) Establish rules for the safe transportation of marijuana.

23 (d) The department shall make available free of charge all forms for applications and

24 reports.

25 (e) The department shall issue all registrations as required by chapter 21-28.6.2 and

26 Rhode Island general laws section 44-49-17.

27 (f) Except as provided in this subsection, the department shall keep the name and address

28 of each wholesaler, retailer, and safety compliance facility and each owner, employee, or agent of

29 a wholesaler, retailer, and safety compliance facility confidential and refuse to disclose this

30 information to any individual or public or private entity, except as necessary for authorized

31 employees of the department to perform official duties of the department pursuant to this chapter.

32 The department may confirm to a state or local law enforcement officer that a retailer, wholesaler,

33 or safety compliance facility holds a valid registration if the law enforcement officer inquires

34 about the specific location or entity.

1 (g) The department shall not require:

2 (1) An individual consumer to provide a retailer with personal information other than
3 government-issued identification to determine the individual's age; or

4 (2) A retailer to acquire and record personal information about individual customers other
5 than information typically acquired in a financial transaction conducted at a retail liquor store.

6 **21-28.6.2-18. Failure of department to adopt regulations.** -- (a) The department shall
7 adopt regulations to implement this chapter and shall begin accepting applications for retailers,
8 wholesalers, and safety compliance facilities within one hundred eighty (180) days of the
9 effective date of this chapter.

10 (b) If the department fails to adopt regulations to implement this chapter and begins
11 processing applications for retailers and wholesalers within one hundred eighty (180) days of the
12 effective date of this chapter, any citizen may commence an action in a court of competent
13 jurisdiction to compel the department to perform the actions mandated pursuant to the provisions
14 of this chapter.

15 **21-28.6.2-19. Advisory committee.** -- (a) The governor shall appoint a twelve (12)
16 member advisory committee comprised of: one member of the House of Representatives; one
17 member of the Senate; one representative of the department of business regulation; one physician
18 with experience in medical marijuana issues; one economist; one board member or principal
19 officer of a registered safety compliance facility; one individual with experience in policy
20 development or implementation in the field of marijuana policy; one public health professional;
21 one sociologist; one attorney familiar with first amendment law; one expert in criminal justice;
22 and one researcher.

23 (b) The advisory committee shall meet at least two (2) times per year for the purpose of
24 collecting information, evaluating the effects of this chapter, and making recommendations to the
25 department, including:

26 (1) The content of safety inserts;

27 (2) Whether additional warning labels should be added;

28 (3) Strategies for educating physicians and the public about research relating to
29 marijuana's benefits and risks;

30 (4) Any effect on organized crime in the state;

31 (5) Any effect on criminal sales of marijuana in middle and high schools;

32 (6) Quality control and labeling standards;

33 (7) Recommendations on restrictions on advertising;

34 (8) Recommendations for reporting and data monitoring related to beneficial and adverse

1 effects of marijuana; and

2 (9) An update on the latest research related to driving under the influence of marijuana,
3 along with recommendations regarding policies for roadside sobriety tests and any recommended
4 changes to driving under the influence statutes.

5 (c) The department shall submit to the legislature an annual report by the first Thursday
6 of every year, which shall include:

7 (1) The direct revenue and costs related to implementing this chapter, including revenue
8 from taxes, fines, and fees;

9 (2) The number of registrations suspended and revoked, and the nature of revocations;
10 and

11 (3) The findings of the advisory committee.

12 SECTION 2. Sections 21-28-4.01, 21-28-4.01.1, and 21-28-4.01.2 of the General Laws in
13 Chapter 21-28 entitled "Uniform Controlled Substances Act" are hereby amended to read as
14 follows:

15 **21-28-4.01. Prohibited acts A -- Penalties. [Effective until April 1, 2013.] --** (a) (1)

16 Except as authorized by this chapter, it shall be unlawful for any person to manufacture, deliver,
17 or possess with intent to manufacture or deliver a controlled substance.

18 (2) Any person who is not a drug addicted person, as defined in section 21-28-1.02(18),
19 who violates this subsection with respect to a controlled substance classified in schedule I or II,
20 except the substance classified as marijuana, is guilty of a crime and upon conviction may be
21 imprisoned to a term up to life, or fined not more than five hundred thousand dollars (\$500,000)
22 nor less than ten thousand dollars (\$10,000), or both.

23 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
24 death to the person to whom the controlled substance is delivered, it shall not be a defense that
25 the person delivering the substance was at the time of delivery, a drug addicted person as defined
26 in section 21-28-1.02(18).

27 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates
28 this subsection with respect to:

29 (i) A controlled substance classified in schedule I or II, is guilty of a crime and upon
30 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one
31 hundred thousand dollars (\$100,000) nor less than three thousand dollars (\$3,000), or both;

32 (ii) A controlled substance classified in schedule III or IV, is guilty of a crime and upon
33 conviction may be imprisoned for not more than twenty (20) years, or fined not more than forty
34 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in

1 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
2 more than twenty thousand dollars (\$20,000), or both.

3 (iii) A controlled substance classified in schedule V, is guilty of a crime and upon
4 conviction may be imprisoned for not more than one year, or fined not more than ten thousand
5 dollars (\$10,000), or both.

6 (b) (1) Except as authorized by this chapter, it is unlawful for any person to create,
7 deliver, or possess with intent to deliver, a counterfeit substance.

8 (2) Any person who violates this subsection with respect to:

9 (i) A counterfeit substance classified in schedule I or II, is guilty of a crime and upon
10 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one
11 hundred thousand dollars (\$100,000), or both;

12 (ii) A counterfeit substance classified in schedule III or IV, is guilty of a crime and upon
13 conviction may be imprisoned for not more than twenty (20) years, or fined not more than forty
14 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
15 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
16 more than twenty thousand dollars (\$20,000) or both.

17 (iii) A counterfeit substance classified in schedule V, is guilty of a crime and upon
18 conviction may be imprisoned for not more than one year, or fined not more than ten thousand
19 dollars (\$10,000), or both.

20 (c) (1) It shall be unlawful for any person knowingly or intentionally to possess a
21 controlled substance, unless the substance was obtained directly from or pursuant to a valid
22 prescription or order of a practitioner while acting in the course of his or her professional
23 practice, or except as otherwise authorized by this chapter.

24 (2) Any person who violates this subsection with respect to:

25 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the
26 substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned for
27 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five
28 thousand dollars (\$5,000), or both;

29 (ii) A controlled substance classified in schedule I as marijuana is guilty of a
30 misdemeanor and upon conviction may be imprisoned for not more than one year or fined not less
31 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

32 (3) Additionally every person convicted or who pleads nolo contendere under paragraph
33 (2)(i) of this subsection or convicted or who pleads nolo contendere a second or subsequent time
34 under paragraph (2)(ii) of this subsection, who is not sentenced to a term of imprisonment to

1 serve for the offense, shall be required to:

2 (i) Perform, up to one hundred (100) hours of community service;

3 (ii) Attend and complete a drug counseling and education program as prescribed by the
4 director of the department of mental health, retardation and hospitals and pay the sum of four
5 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as
6 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one
7 year;

8 (iii) The court shall not suspend any part or all of the imposition of the fee required by
9 this subsection, unless the court finds an inability to pay;

10 (iv) If the offense involves the use of any automobile to transport the substance or the
11 substance is found within an automobile, then a person convicted or who pleads nolo contendere
12 under paragraphs (2)(i) and (ii) of this subsection shall be subject to a loss of license for a period
13 of six (6) months for a first offense and one year for each offense after this.

14 (4) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall
15 be deposited as general revenues and shall be collected from the person convicted or who pleads
16 nolo contendere before any other fines authorized by this chapter.

17 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent
18 to manufacture or distribute, an imitation controlled substance. Any person who violates this
19 subsection is guilty of a crime, and upon conviction shall be subject to the same term of
20 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
21 controlled substance which the particular imitation controlled substance forming the basis of the
22 prosecution was designed to resemble and/or represented to be; but in no case shall the
23 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
24 (\$20,000).

25 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
26 anabolic steroid or human growth hormone for: (1) enhancing performance in an exercise, sport,
27 or game, or (2) hormonal manipulation intended to increase muscle mass, strength, or weight
28 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
29 and upon conviction may be imprisoned for not more than six (6) months or a fine of not more
30 than one thousand dollars (\$1,000), or both.

31 **21-28-4.01. Prohibited acts A -- Penalties. [Effective April 1, 2013.]** -- (a) (1) Except
32 as authorized by this chapter, [or as exempted from criminal penalties pursuant to chapters 21-](#)
33 [28.6.1, 21-28.6.2 or 44-19-17](#), it shall be unlawful for any person to manufacture, deliver, or
34 possess with intent to manufacture or deliver a controlled substance.

1 (2) Any person who is not a drug addicted person, as defined in section 21-28-1.02(18),
2 who violates this subsection with respect to a controlled substance classified in schedule I or II,
3 except the substance classified as marijuana, is guilty of a crime and upon conviction may be
4 imprisoned to a term up to life, or fined not more than five hundred thousand dollars (\$500,000)
5 nor less than ten thousand dollars (\$10,000), or both.

6 (3) Where the deliverance as prohibited in this subsection shall be the proximate cause of
7 death to the person to whom the controlled substance is delivered, it shall not be a defense that
8 the person delivering the substance was at the time of delivery, a drug addicted person as defined
9 in section 21-28-1.02(18).

10 (4) Any person, except as provided for in subdivision (2) of this subsection, who violates
11 this subsection with respect to:

12 (i) A controlled substance classified in schedule I or II, except the substance classified as
13 marijuana, is guilty of a crime and upon conviction may be imprisoned for not more than thirty
14 (30) years, or fined not more than one hundred thousand dollars (\$100,000) nor less than three
15 thousand dollars (\$3,000), or both;

16 (ii) The manufacture of three (3) or fewer mature, flowering marijuana plants by a person
17 under twenty-one (21) years of age, is guilty of a crime and upon conviction may be imprisoned
18 for not more than five (5) years, or fined not more than three thousand dollars (\$3,000), or both.

19 (iii) The manufacture of four (4) or more mature, flowering marijuana plants, is guilty of
20 a crime and upon conviction may be imprisoned for not more than ten (10) years, or fined not
21 more than one hundred thousand dollars (\$100,000), nor less than one thousand dollars (\$1,000),
22 or both.

23 (iv) The delivery of marijuana, is guilty of a crime and upon conviction may be
24 imprisoned for not more than ten (10) years, or fined not more than one hundred thousand dollars
25 (\$100,000) nor less than one thousand dollars (\$1,000), or both.

26 ~~(iii)~~(v) A controlled substance classified in schedule III or IV, is guilty of a crime and
27 upon conviction may be imprisoned for not more than twenty (20) years, or fined not more than
28 forty thousand dollars (\$40,000), or both; provided, with respect to a controlled substance
29 classified in schedule III(d), upon conviction may be imprisoned for not more than five (5) years,
30 or fined not more than twenty thousand dollars (\$20,000), or both.

31 ~~(iii)~~(vi) A controlled substance classified in schedule V, is guilty of a crime and upon
32 conviction may be imprisoned for not more than one year, or fined not more than ten thousand
33 dollars (\$10,000), or both.

34 (b)(1) Except as authorized by this chapter, it is unlawful for any person to create,

1 deliver, or possess with intent to deliver, a counterfeit substance.

2 (2) Any person who violates this subsection with respect to:

3 (i) A counterfeit substance classified in schedule I or II, is guilty of a crime and upon
4 conviction may be imprisoned for not more than thirty (30) years, or fined not more than one
5 hundred thousand dollars (\$100,000), or both;

6 (ii) A counterfeit substance classified in schedule III or IV, is guilty of a crime and upon
7 conviction may be imprisoned for not more than twenty (20) years, or fined not more than forty
8 thousand dollars (\$40,000), or both; provided, with respect to a controlled substance classified in
9 schedule III(d), upon conviction may be imprisoned for not more than five (5) years, or fined not
10 more than twenty thousand dollars (\$20,000) or both.

11 (iii) A counterfeit substance classified in schedule V, is guilty of a crime and upon
12 conviction may be imprisoned for not more than one year, or fined not more than ten thousand
13 dollars (\$10,000), or both.

14 (c)(1) It shall be unlawful for any person knowingly or intentionally to possess a
15 controlled substance, unless the substance was obtained directly from or pursuant to a valid
16 prescription or order of a practitioner while acting in the course of his or her professional
17 practice, or except as otherwise authorized by this chapter [or exempt from arrest by chapters 21-](#)
18 [28.6.1, 21-28.6.2 or 44-49-17.](#)

19 (2) Any person who violates this subsection with respect to:

20 (i) A controlled substance classified in schedules I, II and III, IV, and V, except the
21 substance classified as marijuana, is guilty of a crime and upon conviction may be imprisoned for
22 not more than three (3) years or fined not less than five hundred dollars (\$500) nor more than five
23 thousand dollars (\$5,000), or both;

24 (ii) More than one ounce (1 oz.) of a controlled substance classified in schedule I as
25 marijuana is guilty of a misdemeanor except for those persons subject to subdivision 21-28-
26 4.01(a)(1) and upon conviction may be imprisoned for not more than one year or fined not less
27 than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or both.

28 (iii) Notwithstanding any public, special or general laws to the contrary, the possession
29 of one ounce (1 oz.) or less of marijuana by a person who is eighteen (18) years of age or older
30 [but who is less than twenty-one \(21\) years of age](#) and who is not exempted from penalties
31 pursuant to chapter 21-28.6 shall constitute a civil offense, rendering the offender liable to a civil
32 penalty in the amount of one hundred fifty dollars (\$150) and forfeiture of the marijuana, but not
33 to any other form of criminal or civil punishment or disqualification. Notwithstanding any public,
34 special or general laws to the contrary, this civil penalty of one hundred fifty dollars (\$150) and

1 forfeiture of the marijuana shall apply if the offense is the first (1st) or second (2nd) violation
2 within the previous eighteen (18) months.

3 (iv) Notwithstanding any public, special or general laws to the contrary, possession of
4 one ounce (1 oz.) or less of marijuana by a person who is under the age of eighteen (18) years and
5 who is not exempted from penalties pursuant to chapter 21-28.6 shall constitute a civil offense,
6 rendering the offender liable to a civil penalty in the amount of one hundred fifty dollars (\$150)
7 and forfeiture of the marijuana; provided the minor offender completes an approved drug
8 awareness program and community service as determined by the court. If the person under the
9 age of eighteen (18) years fails to complete an approved drug awareness program and community
10 service within one year of the offense, the penalty shall be a three hundred dollar (\$300) civil fine
11 and forfeiture of the marijuana, except that if no drug awareness program or community service is
12 available, the penalty shall be a fine of one hundred fifty dollars (\$150) and forfeiture of the
13 marijuana. The parents or legal guardian of any offender under the age of eighteen (18) shall be
14 notified of the offense and the availability of a drug awareness and community service program.
15 The drug awareness program must be approved by the court, but shall, at a minimum, provide
16 four (4) hours of instruction or group discussion, and ten (10) hours of community service.
17 Notwithstanding any other public, special or general laws to the contrary, this civil penalty shall
18 apply if the offense is the first (1st) or second (2nd) violation within the previous eighteen (18)
19 months.

20 (v) Notwithstanding any public, special, or general laws to the contrary, a person not
21 exempted from penalties pursuant to chapter 21-28.6 found in possession of one ounce (1 oz.) or
22 less of marijuana is guilty of a misdemeanor and upon conviction may be imprisoned for not
23 more than thirty (30) days or fined not less than two hundred dollars (\$200) nor more than five
24 hundred dollars (\$500), or both, if that person has been previously adjudicated on a violation for
25 possession of less than one ounce (1 oz.) of marijuana under subparagraphs 21-28-4.01(c)(2)(iii)
26 or 21-28-4.01(c)(2)(iv) two (2) times in the eighteen (18) months prior to the third (3rd) offense.

27 (vi) Any unpaid civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
28 4.01(c)(2)(iv) shall double to three hundred dollars (\$300) if not paid within thirty (30) days of
29 the offense. The civil fine shall double again to six hundred dollars (\$600) if it has not been paid
30 within ninety (90) days.

31 (vii) No person may be arrested for a violation of subparagraphs 21-28-4.01(c)(2)(iii) or
32 21-28-4.01(c)(2)(iv) except as provided in this subparagraph. Any person in possession of an
33 identification card, license, or other form of identification issued by the state or any state, city or
34 town, or any college or university, who fails to produce the same upon request of a police officer

1 who informs the person that he or she has been found in possession of what appears to the officer
2 to be one ounce (1 oz.) or less of marijuana, or any person without any such forms of
3 identification that fails or refuses to truthfully provide his or her name, address, and date of birth
4 to a police officer who has informed such person that the officer intends to provide such
5 individual with a citation for possession of one ounce (1 oz.) or less of marijuana, may be
6 arrested.

7 (viii) No violation of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be
8 considered a violation of parole or probation.

9 (ix) Any records collected by any state agency or tribunal that include personally
10 identifiable information about violations of subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
11 4.01(c)(2)(iv) shall be sealed eighteen (18) months after the payment of said civil fine.

12 (3) Jurisdiction. - Any and all violations of subparagraphs 21-28-4.01(c)(2)(iii) and 21-
13 28-4.01(c)(2)(iv) shall be the exclusive jurisdiction of the Rhode Island traffic tribunal. All
14 money associated with the civil fine issued under subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-
15 4.01(c)(2)(iv) shall be payable to the Rhode Island traffic tribunal. Fifty percent (50%) of all fines
16 collected by the Rhode Island traffic tribunal from civil penalties issued pursuant to
17 subparagraphs 21-28-4.01(c)(2)(iii) or 21-28-4.01(c)(2)(iv) shall be expended on drug awareness
18 and treatment programs for youth.

19 (4) Additionally every person convicted or who pleads nolo contendere under paragraph
20 (2)(i) of this subsection or convicted or who pleads nolo contendere a second or subsequent time
21 under paragraph (2)(ii) of this subsection, who is not sentenced to a term of imprisonment to
22 serve for the offense, shall be required to:

23 (i) Perform, up to one hundred (100) hours of community service;

24 (ii) Attend and complete a drug counseling and education program as prescribed by the
25 director of the department of mental health, retardation and hospitals and pay the sum of four
26 hundred dollars (\$400) to help defray the costs of this program which shall be deposited as
27 general revenues. Failure to attend may result after hearing by the court in jail sentence up to one
28 year;

29 (iii) The court shall not suspend any part or all of the imposition of the fee required by
30 this subsection, unless the court finds an inability to pay;

31 (iv) If the offense involves the use of any automobile to transport the substance or the
32 substance is found within an automobile, then a person convicted or who pleads nolo contendere
33 under paragraphs (2)(i) and (ii) of this subsection shall be subject to a loss of license for a period
34 of six (6) months for a first offense and one year for each offense after this.

1 (5) All fees assessed and collected pursuant to paragraph (3)(ii) of this subsection shall
2 be deposited as general revenues and shall be collected from the person convicted or who pleads
3 nolo contendere before any other fines authorized by this chapter.

4 (d) It shall be unlawful for any person to manufacture, distribute, or possess with intent
5 to manufacture or distribute, an imitation controlled substance. Any person who violates this
6 subsection is guilty of a crime, and upon conviction shall be subject to the same term of
7 imprisonment and/or fine as provided by this chapter for the manufacture or distribution of the
8 controlled substance which the particular imitation controlled substance forming the basis of the
9 prosecution was designed to resemble and/or represented to be; but in no case shall the
10 imprisonment be for more than five (5) years nor the fine for more than twenty thousand dollars
11 (\$20,000).

12 (e) It shall be unlawful for a practitioner to prescribe, order, distribute, supply, or sell an
13 anabolic steroid or human growth hormone for: (1) enhancing performance in an exercise, sport,
14 or game, or (2) hormonal manipulation intended to increase muscle mass, strength, or weight
15 without a medical necessity. Any person who violates this subsection is guilty of a misdemeanor
16 and upon conviction may be imprisoned for not more than six (6) months or a fine of not more
17 than one thousand dollars (\$1,000), or both.

18 **21-28-4.01.1. Minimum sentence -- Certain quantities of controlled substances. --** (a)

19 Except as authorized by this chapter, it shall be unlawful for any person to manufacture, sell, or
20 possess with intent to manufacture, or sell, a controlled substance classified in schedules I or II
21 (excluding marijuana) or to possess or deliver the following enumerated quantities of certain
22 controlled substances:

23 (1) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
24 detectable amount of heroin;

25 (2) One ounce (1 oz.) to one kilogram (1 kg.) of a mixture or substance containing a
26 detectable amount of:

27 (i) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine,
28 ecgonine, and derivatives of ecgonine or their salts have been removed;

29 (ii) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

30 (iii) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

31 (iv) Any compound, mixture, or preparation which contains any quantity of any of the
32 substances referred to in paragraphs (i) -- (iii) of this subdivision;

33 (3) One gram (1 g.) to ten grams (10 gs.) of phencyclidine (PCP) or one hundred (100) to
34 one thousand (1,000) tablets of a mixture or substance containing a detectable amount of

1 phencyclidine (PCP); [or](#)

2 (4) One-tenth of a gram (0.1 g.) to one gram (1 g.) of lysergic acid diethylamide (LSD)
3 or one hundred (100) to one thousand (1,000) tablets of a mixture or substance containing a
4 detectable amount of lysergic acid diethylamide (LSD); ~~or .~~

5 ~~(5) One kilogram (1 kg.) to five (5 kgs.) kilograms of a mixture containing a detectable~~
6 ~~amount of marijuana.~~

7 (b) Any person who violates this section shall be guilty of a crime, and upon conviction,
8 may be imprisoned for a term up to fifty (50) years and fined not more than five hundred
9 thousand dollars (\$500,000).

10 **21-28-4.01.2. Minimum sentence -- Certain quantities of controlled substances. --** (a)

11 Except as authorized by the chapter, it shall be unlawful for any person to possess, manufacture,
12 sell, or deliver the following enumerated quantities of certain controlled substances:

13 (1) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
14 amount of heroin;

15 (2) More than one kilogram (1 kg.) of a mixture or substance containing a detectable
16 amount of

17 (i) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine,
18 ecgonine, and derivatives of ecgonine or their salts have been removed;

19 (ii) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

20 (iii) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

21 (iv) Any compound, mixture, or preparation which contains any quantity of any of the
22 substances referred to in paragraphs (i) -- (iii) of this subdivision;

23 (3) More than ten grams (10 gs.) of phencyclidine (PCP) or more than one thousand
24 (1,000) tablets of a mixture or substance containing a detectable amount of phencyclidine (PCP);
25 [or](#)

26 (4) More than one gram (1 g.) of lysergic acid diethylamide (LSD); or more than one
27 thousand (1,000) tablets of a mixture or substance containing a detectable amount of lysergic acid
28 diethylamide (LSD); ~~or .~~

29 ~~(5) More than five kilograms (5 kgs.) of a mixture containing a detectable amount of~~
30 ~~marijuana.~~

31 (b) Any person who violates this section shall be guilty of a crime, and upon conviction,
32 may be imprisoned for a term up to life and fined not more than one million dollars (\$1,000,000).

33 SECTION 3. Chapter 21-28 of the General Laws entitled "Uniform Controlled
34 Substances Act" is hereby amended by adding thereto the following section:

1 **21-28-4.23. Marijuana exemption.** -- [The penalties provided for in this chapter do not](#)
2 [apply to those exempted from criminal penalties pursuant to sections 21-28.6.1, 21-28.6.2 and 44-](#)
3 [49-17.](#)

4 SECTION 4. Section 31-27-2 of the General Laws in Chapter 31-27 entitled "Motor
5 Vehicle Offenses" is hereby amended to read as follows:

6 **31-27-2. Driving under influence of liquor or drugs.** -- (a) Whoever drives or
7 otherwise operates any vehicle in the state while under the influence of any intoxicating liquor,
8 drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any
9 combination of these, shall be guilty of a misdemeanor except as provided in subdivision (d)(3)
10 and shall be punished as provided in subsection (d) of this section.

11 (b)(1) Any person charged under subsection (a) of this section whose blood alcohol
12 concentration is eight one-hundredths of one percent (.08%) or more by weight as shown by a
13 chemical analysis of a blood, breath, or urine sample shall be guilty of violating subsection (a) of
14 this section. This provision shall not preclude a conviction based on other admissible evidence.
15 Proof of guilt under this section may also be based on evidence that the person charged was under
16 the influence of intoxicating liquor, drugs, toluene, or any controlled substance defined in chapter
17 28 of title 21, or any combination of these, to a degree which rendered the person incapable of
18 safely operating a vehicle. The fact that any person charged with violating this section is or has
19 been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of
20 violating this section.

21 (2) Whoever drives or otherwise operates any vehicle in the state with a blood presence
22 of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by
23 analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as
24 provided in subsection (d) of this section. [A person twenty-one \(21\) years of age or older or a](#)
25 [person exempt from criminal penalties for the medical use of marijuana pursuant to chapter 21-](#)
26 [28.6 of the general laws shall not be considered under the influence of marijuana solely because](#)
27 [of the presence of marijuana metabolites or components of marijuana unless the concentration of](#)
28 [components of marijuana is proven to be sufficient to cause impairment.](#)

29 (c) In any criminal prosecution for a violation of subsection (a) of this section, evidence
30 as to the amount of intoxicating liquor, toluene, or any controlled substance as defined in chapter
31 28 of title 21, or any combination of these, in the defendant's blood at the time alleged as shown
32 by a chemical analysis of the defendant's breath, blood, or urine or other bodily substance shall be
33 admissible and competent, provided that evidence is presented that the following conditions have
34 been complied with:

1 (1) The defendant has consented to the taking of the test upon which the analysis is
2 made. Evidence that the defendant had refused to submit to the test shall not be admissible unless
3 the defendant elects to testify.

4 (2) A true copy of the report of the test result was mailed within seventy-two (72) hours
5 of the taking of the test to the person submitting to a breath test.

6 (3) Any person submitting to a chemical test of blood, urine, or other body fluids shall
7 have a true copy of the report of the test result mailed to him or her within thirty (30) days
8 following the taking of the test.

9 (4) The test was performed according to methods and with equipment approved by the
10 director of the department of health of the state of Rhode Island and by an authorized individual.

11 (5) Equipment used for the conduct of the tests by means of breath analysis had been
12 tested for accuracy within thirty (30) days preceding the test by personnel qualified as
13 hereinbefore provided, and breathalyzer operators shall be qualified and certified by the
14 department of health within three hundred sixty-five (365) days of the test.

15 (6) The person arrested and charged with operating a motor vehicle while under the
16 influence of intoxicating liquor, toluene, or any controlled substance as defined in chapter 28 of
17 title 21, or, any combination of these in violation of subsection (a) of this section was afforded the
18 opportunity to have an additional chemical test. The officer arresting or so charging the person
19 shall have informed the person of this right and afforded him or her a reasonable opportunity to
20 exercise this right, and a notation to this effect is made in the official records of the case in the
21 police department. Refusal to permit an additional chemical test shall render incompetent and
22 inadmissible in evidence the original report.

23 (d)(1)(i) Every person found to have violated subdivision (b)(1) of this section shall be
24 sentenced as follows: for a first violation whose blood alcohol concentration is eight one-
25 hundredths of one percent (.08%) but less than one-tenth of one percent (.1%) by weight or who
26 has a blood presence of any scheduled controlled substance as defined in subdivision (b)(2) shall
27 be subject to a fine of not less than one hundred dollars (\$100) nor more than three hundred
28 dollars (\$300), shall be required to perform ten (10) to sixty (60) hours of public community
29 restitution, and/or shall be imprisoned for up to one year. The sentence may be served in any unit
30 of the adult correctional institutions in the discretion of the sentencing judge and/or shall be
31 required to attend a special course on driving while intoxicated or under the influence of a
32 controlled substance; provided, however, that the court may permit a servicemember or veteran to
33 complete any court-approved counseling program administered or approved by the Veterans'
34 Administration, and his or her driver's license shall be suspended for thirty (30) days up to one

1 hundred eighty (180) days.

2 (ii) Every person convicted of a first violation whose blood alcohol concentration is one-
3 tenth of one percent (.1%) by weight or above but less than fifteen hundredths of one percent
4 (.15%) or whose blood alcohol concentration is unknown shall be subject to a fine of not less than
5 one hundred (\$100) dollars nor more than four hundred dollars (\$400) and shall be required to
6 perform ten (10) to sixty (60) hours of public community restitution and/or shall be imprisoned
7 for up to one year. The sentence may be served in any unit of the adult correctional institutions in
8 the discretion of the sentencing judge. The person's driving license shall be suspended for a
9 period of three (3) months to twelve (12) months. The sentencing judge shall require attendance
10 at a special course on driving while intoxicated or under the influence of a controlled substance
11 and/or alcoholic or drug treatment for the individual; provided, however, that the court may
12 permit a servicemember or veteran to complete any court-approved counseling program
13 administered or approved by the Veterans' Administration.

14 (iii) Every person convicted of a first offense whose blood alcohol concentration is
15 fifteen hundredths of one percent (.15%) or above, or who is under the influence of a drug,
16 toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to a fine of
17 five hundred dollars (\$500) and shall be required to perform twenty (20) to sixty (60) hours of
18 public community restitution and/or shall be imprisoned for up to one year. The sentence may be
19 served in any unit of the adult correctional institutions in the discretion of the sentencing judge.
20 The person's driving license shall be suspended for a period of three (3) months to eighteen (18)
21 months. The sentencing judge shall require attendance at a special course on driving while
22 intoxicated or under the influence of a controlled substance and/or alcohol or drug treatment for
23 the individual; provided, however, that the court may permit a servicemember or veteran to
24 complete any court-approved counseling program administered or approved by the Veterans'
25 Administration.

26 (2)(i) Every person convicted of a second violation within a five (5) year period with a
27 blood alcohol concentration of eight one-hundredths of one percent (.08%) or above but less than
28 fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is unknown or
29 who has a blood presence of any controlled substance as defined in subdivision (b)(2), and every
30 person convicted of a second violation within a five (5) year period regardless of whether the
31 prior violation and subsequent conviction was a violation and subsequent conviction under this
32 statute or under the driving under the influence of liquor or drugs statute of any other state, shall
33 be subject to a mandatory fine of four hundred dollars (\$400). The person's driving license shall
34 be suspended for a period of one year to two (2) years, and the individual shall be sentenced to

1 not less than ten (10) days nor more than one year in jail. The sentence may be served in any unit
2 of the adult correctional institutions in the discretion of the sentencing judge; however, not less
3 than forty-eight (48) hours of imprisonment shall be served consecutively. The sentencing judge
4 shall require alcohol or drug treatment for the individual; provided, however, that the court may
5 permit a servicemember or veteran to complete any court-approved counseling program
6 administered or approved by the Veterans' Administration and may prohibit that person from
7 operating a motor vehicle that is not equipped with an ignition interlock system for a period of
8 one year to two (2) years following the completion of the sentence as provided in section 31-27-
9 2.8.

10 (ii) Every person convicted of a second violation within a five (5) year period whose
11 blood alcohol concentration is fifteen hundredths of one percent (.15%) or above by weight as
12 shown by a chemical analysis of a blood, breath, or urine sample or who is under the influence of
13 a drug, toluene, or any controlled substance as defined in subdivision (b)(1) shall be subject to
14 mandatory imprisonment of not less than six (6) months nor more than one year, a mandatory fine
15 of not less than one thousand dollars (\$1,000) and a mandatory license suspension for a period of
16 two (2) years from the date of completion of the sentence imposed under this subsection. The
17 sentencing judge shall require alcohol or drug treatment for the individual; provided, however,
18 that the court may permit a servicemember or veteran to complete any court approved counseling
19 program administered or approved by the Veterans' Administration.

20 (3)(i) Every person convicted of a third or subsequent violation within a five (5) year
21 period with a blood alcohol concentration of eight one-hundredths of one percent (.08%) or above
22 but less than fifteen hundredths of one percent (.15%) or whose blood alcohol concentration is
23 unknown or who has a blood presence of any scheduled controlled substance as defined in
24 subdivision (b)(2) regardless of whether any prior violation and subsequent conviction was a
25 violation and subsequent conviction under this statute or under the driving under the influence of
26 liquor or drugs statute of any other state, shall be guilty of a felony and be subject to a mandatory
27 fine of four hundred (\$400) dollars. The person's driving license shall be suspended for a period
28 of two (2) years to three (3) years, and the individual shall be sentenced to not less than one year
29 and not more than three (3) years in jail. The sentence may be served in any unit of the adult
30 correctional institutions in the discretion of the sentencing judge; however, not less than forty-
31 eight (48) hours of imprisonment shall be served consecutively. The sentencing judge shall
32 require alcohol or drug treatment for the individual; provided, however, that the court may permit
33 a servicemember or veteran to complete any court-approved counseling program administered or
34 approved by the Veterans' Administration, and may prohibit that person from operating a motor

1 vehicle that is not equipped with an ignition interlock system for a period of two (2) years
2 following the completion of the sentence as provided in section 31-27-2.8.

3 (ii) Every person convicted of a third or subsequent violation within a five (5) year
4 period whose blood alcohol concentration is fifteen hundredths of one percent (.15%) above by
5 weight as shown by a chemical analysis of a blood, breath, or urine sample or who is under the
6 influence of a drug, toluene or any controlled substance as defined in subdivision (b)(1) shall be
7 subject to mandatory imprisonment of not less than three (3) years nor more than five (5) years, a
8 mandatory fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars
9 (\$5,000) and a mandatory license suspension for a period of three (3) years from the date of
10 completion of the sentence imposed under this subsection.

11 (iii) In addition to the foregoing penalties, every person convicted of a third or
12 subsequent violation within a five (5) year period regardless of whether any prior violation and
13 subsequent conviction was a violation and subsequent conviction under this statute or under the
14 driving under the influence of liquor or drugs statute of any other state shall be subject, in the
15 discretion of the sentencing judge, to having the vehicle owned and operated by the violator
16 seized and sold by the state of Rhode Island, with all funds obtained by the sale to be transferred
17 to the general fund.

18 (4) Whoever drives or otherwise operates any vehicle in the state while under the
19 influence of any intoxicating liquor, drugs, toluene, or any controlled substance as defined in
20 chapter 28 of title 21, or any combination of these, when his or her license to operate is
21 suspended, revoked or cancelled for operating under the influence of a narcotic drug or
22 intoxicating liquor shall be guilty of a felony punishable by imprisonment for not more than three
23 (3) years and by a fine or not more than three thousand dollars (\$3,000). The court shall require
24 alcohol and/or drug treatment for the individual; provided, the penalties provided for in
25 subdivision 31-27-2(d)(4) shall not apply to an individual who has surrendered his or her license,
26 and served the court ordered period of suspension, but who, for any reason, has not had their
27 license reinstated after the period of suspension, revocation, or suspension has expired; provided,
28 further the individual shall be subject to the provisions of paragraphs 31-27-2(d)(2)(i) or (ii) or
29 31-27-22(d)(3)(i), (ii), or (iii) regarding subsequent offenses, and any other applicable provision
30 of section 31-27-2.

31 (5) (i) For purposes of determining the period of license suspension, a prior violation
32 shall constitute any charge brought and sustained under the provisions of this section or section
33 31-27-2.1.

34 (ii) Any person over the age of eighteen (18) who is convicted under this section for

1 operating a motor vehicle while under the influence of alcohol, other drugs, or a combination of
2 these, while a child under the age of thirteen (13) years was present as a passenger in the motor
3 vehicle when the offense was committed may be sentenced to a term of imprisonment of not more
4 than one year and further shall not be entitled to the benefit of suspension or deferment of this
5 sentence. The sentence imposed under this section may be served in any unit of the adult
6 correctional institutions in the discretion of the sentencing judge.

7 (6) (i) Any person convicted of a violation under this section shall pay a highway
8 assessment fine of five hundred dollars (\$500) which shall be deposited into the general fund. The
9 assessment provided for by this subsection shall be collected from a violator before any other
10 fines authorized by this section.

11 (ii) Any person convicted of a violation under this section shall be assessed a fee of
12 eighty-six dollars (\$86).

13 (7) (i) If the person convicted of violating this section is under the age of eighteen (18)
14 years, for the first violation he or she shall be required to perform ten (10) to sixty (60) hours of
15 public community restitution, and the juvenile's driving license shall be suspended for a period of
16 six (6) months, and may be suspended for a period up to eighteen (18) months. The sentencing
17 judge shall also require attendance at a special course on driving while intoxicated or under the
18 influence of a controlled substance and alcohol or drug education and/or treatment for the
19 juvenile. The juvenile may also be required to pay a highway assessment fine of no more than
20 five hundred dollars (\$500), and the assessment imposed shall be deposited into the general fund.

21 (ii) If the person convicted of violating this section is under the age of eighteen (18)
22 years, for a second or subsequent violation regardless of whether any prior violation and
23 subsequent conviction was a violation and subsequent under this statute or under the driving
24 under the influence of liquor or drugs statute of any other state, he or she shall be subject to a
25 mandatory suspension of his or her driving license until such time as he or she is twenty-one (21)
26 years of age and may, in the discretion of the sentencing judge, also be sentenced to the Rhode
27 Island training school for a period of not more than one year and/or a fine of not more than five
28 hundred dollars (\$500).

29 (8) Any person convicted of a violation under this section may undergo a clinical
30 assessment at the community college of Rhode Island 's center for workforce and community
31 education. Should this clinical assessment determine problems of alcohol, drug abuse, or
32 psychological problems associated with alcoholic or drug abuse, this person shall be referred to
33 an appropriate facility, licensed or approved by the department of mental health, retardation and
34 hospitals for treatment placement, case management, and monitoring. In the case of a

1 servicemember or veteran, the court may order that the person be evaluated through the Veterans'
2 Administration. Should the clinical assessment determine problems of alcohol, drug abuse, or
3 psychological problems associated with alcohol or drug abuse, the person may have their
4 treatment, case management and monitoring administered or approved by the Veterans'
5 Administration.

6 (e) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol
7 per one hundred (100) cubic centimeters of blood.

8 (f)(1) There is established an alcohol and drug safety unit within the division of motor
9 vehicles to administer an alcohol safety action program. The program shall provide for placement
10 and follow-up for persons who are required to pay the highway safety assessment. The alcohol
11 and drug safety action program will be administered in conjunction with alcohol and drug
12 programs licensed by the department of mental health retardation and hospitals.

13 (2) Persons convicted under the provisions of this chapter shall be required to attend a
14 special course on driving while intoxicated or under the influence of a controlled substance,
15 and/or participate in an alcohol or drug treatment program; provided, however, that the court may
16 permit a servicemember or veteran to complete any court-approved counseling program
17 administered or approved by the Veterans' Administration. The course shall take into
18 consideration any language barrier which may exist as to any person ordered to attend, and shall
19 provide for instruction reasonably calculated to communicate the purposes of the course in
20 accordance with the requirements of the subsection. Any costs reasonably incurred in connection
21 with the provision of this accommodation shall be borne by the person being retrained. A copy of
22 any violation under this section shall be forwarded by the court to the alcohol and drug safety
23 unit. In the event that persons convicted under the provisions of this chapter fail to attend and
24 complete the above course or treatment program, as ordered by the judge, then the person may be
25 brought before the court, and after a hearing as to why the order of the court was not followed,
26 may be sentenced to jail for a period not exceeding one year.

27 (3) The alcohol and drug safety action program within the division of motor vehicles
28 shall be funded by general revenue appropriations.

29 (g) The director of the health department of the state of Rhode Island is empowered to
30 make and file with the secretary of state regulations which prescribe the techniques and methods
31 of chemical analysis of the person's body fluids or breath, and the qualifications and certification
32 of individuals authorized to administer this testing and analysis.

33 (h) Jurisdiction for misdemeanor violations of this section shall be with the district court
34 for persons eighteen (18) years of age or older and to the family court for persons under the age

1 of eighteen (18) years. The courts shall have full authority to impose any sentence authorized and
2 to order the suspension of any license for violations of this section. All trials in the district court
3 and family court of violations of the section shall be scheduled within thirty (30) days of the
4 arraignment date. No continuance or postponement shall be granted except for good cause shown.
5 Any continuances that are necessary shall be granted for the shortest practicable time. Trials in
6 superior court are not required to be scheduled within thirty (30) days of the arraignment date.

7 (i) No fines, suspensions, assessments, alcohol or drug treatment programs, course on
8 driving while intoxicated or under the influence of a controlled substance, public community
9 restitution, or jail provided for under this section can be suspended.

10 (j) An order to attend a special course on driving while intoxicated that shall be
11 administered in cooperation with a college or university accredited by the state, shall include a
12 provision to pay a reasonable tuition for the course in an amount not less than twenty-five dollars
13 (\$25.00), and a fee of one hundred seventy-five dollars (\$175), which fee shall be deposited into
14 the general fund.

15 (k) For the purposes of this section, any test of a sample of blood, breath, or urine for the
16 presence of alcohol, which relies in whole or in part upon the principle of infrared light
17 absorption is considered a chemical test.

18 (l) If any provision of this section or the application of any provision shall for any reason
19 be judged invalid, such a judgment shall not affect, impair, or invalidate the remainder of the
20 section, but shall be confined in this effect to the provision or application directly involved in the
21 controversy giving rise to the judgment.

22 (m) For the purposes of this section, "servicemember" means a person who is presently
23 serving in the armed forces of the United States including the Coast Guard, a reserve component
24 thereof, or the National Guard. "Veteran" means a person who has served in the armed forces,
25 including the Coast Guard of the United States, a reserve component thereof, or the National
26 Guard, and has been discharged under other than dishonorable conditions.

27 SECTION 5. Section 44-11-11 of the General Laws in Chapter 44-11 entitled "Business
28 Corporation Tax" is hereby amended to read as follows:

29 **44-11-11. "Net income" defined.** -- (a) (1) "Net income" means, for any taxable year
30 and for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the
31 laws of the United States, [except as provided for in subsection 44-11-11\(j\)](#), plus:

- 32 (i) Any interest not included in the taxable income;
33 (ii) Any specific exemptions;
34 (iii) For a captive REIT, an amount equal to the amount of the dividends paid deduction

1 allowed under the Internal Revenue Code for the taxable year;

2 (iv) The tax imposed by this chapter;

3 (v) Any deductions required to be added back to net income under the provisions of
4 paragraph (f) of this section, and minus

5 (vi) Interest on obligations of the United States or its possessions, and other interest
6 exempt from taxation by this state; and

7 (vii) The federal net operating loss deduction.

8 (2) All binding federal elections made by or on behalf of the taxpayer applicable either
9 directly or indirectly to the determination of taxable income shall be binding on the taxpayer
10 except where this chapter or its attendant regulations specifically modify or provide otherwise.
11 Rhode Island taxable income shall not include the "gross-up of dividends" required by the federal
12 Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election
13 of the foreign tax credit.

14 (b) A net operating loss deduction shall be allowed which shall be the same as the net
15 operating loss deduction allowed under 26 U.S.C. section 172, except that:

16 (1) Any net operating loss included in determining the deduction shall be adjusted to
17 reflect the inclusions and exclusions from entire net income required by subsection (a) of this
18 section and section 44-11-11.1;

19 (2) The deduction shall not include any net operating loss sustained during any taxable
20 year in which the taxpayer was not subject to the tax imposed by this chapter; and

21 (3) The deduction shall not exceed the deduction for the taxable year allowable under 26
22 U.S.C. section 172; provided, that the deduction for a taxable year may not be carried back to any
23 other taxable year for Rhode Island purposes but shall only be allowable on a carry forward basis
24 for the five (5) succeeding taxable years.

25 (c) "Domestic international sales corporations" (referred to as DISCs), for the purposes
26 of this chapter, will be treated as they are under federal income tax law and shall not pay the
27 amount of the tax computed under section 44-11-2(a). Any income to shareholders of DISCs is to
28 be treated in the same manner as it is treated under federal income tax law as it exists on
29 December 31, 1984.

30 (d) A corporation which qualifies as a "foreign sales corporation" (FSC) under the
31 provisions of subchapter N, 26 U.S.C. section 861 et seq., and which has in effect for the entire
32 taxable year a valid election under federal law to be treated as a FSC, shall not pay the amount of
33 the tax computed under section 44-11-2(a). Any income to shareholders of FSCs is to be treated
34 in the same manner as it is treated under federal income tax law as it exists on January 1, 1985.

1 (e) As used in this section:

2 (1) "Affiliated group" has the same meaning as in section 1504 of the Internal Revenue
3 Code.

4 (2) "Intangible expenses and costs" includes: (A) expenses, losses and costs for, related
5 to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance
6 or management, ownership, sale, exchange, or any other disposition of intangible property to the
7 extent such amounts are allowed as deductions or costs in determining taxable income before
8 operating loss deduction and special deductions for the taxable year under the Internal Revenue
9 Code; (B) losses related to or incurred in connection directly or indirectly with factoring
10 transactions or discounting transactions; (C) royalty, patent, technical and copyright fees; (D)
11 licensing fees; and (E) other similar expenses and costs.

12 (3) "Intangible property" means patents, patent applications, trade names, trademarks,
13 service marks, copyrights and similar types of intangible assets.

14 (4) "Interest expenses and costs" means amounts directly or indirectly allowed as
15 deductions under section 163 of the Internal Revenue Code for purposes of determining taxable
16 income under the Internal Revenue Code to the extent such expenses and costs are directly or
17 indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance,
18 management, ownership, sale, exchange or disposition of intangible property.

19 (5) "Related member" means a person that, with respect to the taxpayer during all or any
20 portion of the taxable year, is a related entity, as defined in this subsection, a component member
21 as defined in section 1563(b) of the Internal Revenue Code, or is a person to or from whom there
22 is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue
23 Code.

24 (6) "Related entity" means: (A) a stockholder who is an individual, or a member of the
25 stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder
26 and the members of the stockholder's family own directly, indirectly, beneficially or
27 constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's
28 outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company,
29 estate, trust or corporation, if the stockholder and the stockholder's partnership, limited liability
30 companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively,
31 in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or
32 (C) a corporation, or a party related to the corporation in a manner that would require an
33 attribution of stock from the corporation to the party or from the party to the corporation under
34 the attribution rules of section 318 of the Internal Revenue Code, if the taxpayer owns, directly,

1 indirectly, beneficially or constructively, at least fifty percent (50%) of the value of the
2 corporation's outstanding stock. The attribution rules on section 318 of the Internal Revenue Code
3 shall apply for purposes of determining whether the ownership requirements of this subdivision
4 have been met.

5 (f) For purposes of computing its net income under this section, a corporation shall add
6 back otherwise deductible interest expenses and costs and intangible expenses and costs directly
7 or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more
8 direct or indirect transactions with, one or more related members.

9 (1) The adjustments required in subsection (f) of this section shall not apply if the
10 corporation establishes by clear and convincing evidence that the adjustments are unreasonable,
11 as determined by the tax administrator or the corporation and the tax administrator agree in
12 writing to the application or use of an alternative method of apportionment under section 44-11-
13 15. Nothing in this subsection shall be construed to the limit or negate the tax administrator's
14 authority to otherwise enter into agreements and compromises otherwise allowed by law.

15 (2) The adjustments required in subsection (f) of this section shall not apply to such
16 portion of interest expenses and costs and intangible expenses and costs that the corporation can
17 establish by the preponderance of the evidence meets both of the following: (A) the related
18 member during the same income year directly or indirectly paid, accrued or incurred such portion
19 to a person who is not a related member; and (B) the transaction giving rise to the interest
20 expenses and costs or the intangible expenses and costs between the corporation and the related
21 member did not have as a significant purpose the avoidance of any portion of the tax due under
22 chapter 44-11.

23 (3) The adjustments required in subsection (f) shall not apply if the corporation
24 establishes by clear and convincing evidence, as determined by the tax administrator, that: (i) a
25 principal purpose of the transaction giving rise to the payment of interest was not to avoid
26 payment of taxes due under this chapter; (ii) the interest is paid pursuant to a contract that reflects
27 an arm's length rate of interest and terms; and (iii) (A) the related member was subject to tax on
28 its net income in this state or another state or possession of the United States or a foreign nation;
29 (B) a measure of said tax included the interest received from the taxpayer; and (C) the effective
30 rate of tax applied to the interest received by the related member is no less than the effective rate
31 of tax applied to the taxpayer under this chapter minus 3 percentage points.

32 (4) Partial Adjustments. - The add back required in subsection (f) shall not be required in
33 part if a portion of the add back would be unreasonable. A portion of the add back will be
34 considered unreasonable to the extent that the taxpayer establishes to the tax administrator by

1 clear and convincing evidence that interest or intangible expense was paid, accrued or incurred to
2 a related member that is taxed on the corresponding income by a state, U.S. possession or foreign
3 jurisdiction. An adjustment to the add back will be allowed based on a factor determined by the
4 apportioned tax rate of the related member in the other jurisdiction compared to the apportioned
5 tax rate of the taxpayer in this state. A taxpayer that seeks to claim this adjustment must file a
6 schedule that sets forth the information required by the tax administrator.

7 (g) Nothing in this section shall require a corporation to add to its net income more than
8 once any amount of interest expenses and costs or intangible expenses and costs that the
9 corporation pays, accrues or incurs to a related member described in subsection (b) of this
10 section.

11 (h) Any taxpayer required to make an adjustment required in subsection (f) for tax years
12 beginning on or after January 1, 2008, is additionally required to report to the tax administrator,
13 on forms required by him, the amount of any adjustments that would have been required if the
14 law applied to tax years beginning on or after January 1, 2007.

15 (i) Nothing in this section shall be construed to limit or negate the tax administrator
16 authority to make adjustments under section 44-11-15.

17 (j) Notwithstanding any federal tax law to the contrary, in computing net income for
18 businesses exempted from criminal penalties under section 21-28.6.1-4 or section 21-28.6-12 of
19 the Rhode Island general laws there shall be allowed as a deduction from state taxes all the
20 ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade
21 or business, including, but not limited to, reasonable allowance for salaries or other compensation
22 for personal services actually rendered.

23 SECTION 6. Chapter 44-49 of the General Laws entitled "Taxation of Marijuana and
24 Controlled Substances" is hereby amended by adding thereto the following section:

25 **44-49-17. No tax stamp required.** -- Controlled substance tax payment with a stamp or
26 other official indicia, as referred to in section 44-49-5, is not required for registered retailers and
27 wholesalers under chapters 21-28.6.1 and 21-28.6.2 and the penalties provided for in this chapter
28 do not apply to those acting in accordance with the laws of, and regulations enacted through the
29 authority of, said chapters of the general laws.

30 SECTION 7. This act shall take effect on April 1, 2013.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO FOOD AND DRUGS -- TAXATION AND REGULATION OF MARIJUANA

1 This act would create the "Marijuana Regulation, Control and Taxation Act" which
2 would legalize the possession of less than one ounce (1 oz.) or less of marijuana, marijuana
3 paraphernalia, and a limited amount of marijuana plants. The act would create a regulatory
4 process for the manufacture, sale and taxation of marijuana.

5 This act would take effect on April 1, 2013.

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